IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/07/2002

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.S.No.443 of 2000 and C.S.No. 444 of 2000
and
O.A.Nos.576 and 577 of 2000

M/s.Sunil Anand & Co.P.Ltd.,
represented by its Managing
Director, Arjunlal Sundardas .. Plaintiff in
CS 443 of 2000

M/s.Sunderdas Arjunlal
by Managing Partner Arjunlal Sunderdas .. Plaintiff in
CS 444 of 2000

vs

1. Cleetus Vincent
2. Tmt.Imelda Cleetus
3. Vinjane Constructions (formerly
Vinjane Centre) rep.by Managing
Partner : Cleetus Vincent .. Defendants in
both the suits

!For Plaintiffs : Mr.K.V.Venkatapathy,
Senior Counsel,
for Mr.M.Rajasekaran

^For Defendants : Mr.P.J.George

:COMMON JUDGMENT

C.S.No.443 of 2000

This suit has been filed for specific performance of the letter of confirmation dated 5.4.1981 executed by the defendants in favour of the plaintiff by directing the defendant to execute and register the Sale Deed in respect of 'A' Schedule property, for a direction to the defendants to hand over possession of 'A' Schedule property, or in the alternative for a direction to the defendants to pay a sum of Rs.2,1 0,75,000/- being the amounts paid by the plaintiff towards purchase of the suit property and interest along with future interest at 30% per annum on Rs.48,70,925/- from the date of plaint till realisation, for a permanent injunction restraining the defendants from in any dealing with the 'A' and 'B' Schedule properties or

alienating in any manner and putting the same to any use and for costs.

2. C.S.No.444 of 2000:

This suit has been filed for specific performance of the letter of confirmation dated 5.4.1981 executed by the defendants in favour of the plaintiff by directing the defendant to execute and register the Sale Deed in respect of 'A' Schedule property, for a direction to the defendants to hand over possession of 'A' Schedule property, or in the alternative for a direction to the defendants to pay a sum of Rs.2,0 4,16,000/- being the amounts paid by the plaintiff towards purchase of the suit property and interest along with future interest at 30% per annum on Rs.47,19,800/- from the date of plaint till realisation, for a permanent injunction restraining the defendants from in any dealing with the 'A' and 'B' Schedule properties or alienating in any manner and putting the same to any use and for costs.

3. The plaint averments in both the suits are common, except the sale consideration and the property in question The averments are as follows:

The landed property at Door No.Old 101, New 96, Pantheon Road, Egmore, Chennai originally owned by the defendants 1 and 2, who are partners in the 3rd defendant firm. The third defendant took up development activities of the property for putting up a multi-storeyed shopping cum office complex. The defendants represented that they are willing to sell the ground and first floors of the proposed building. They agreed to sell the proposed ground floor of the property along with proportionate undivided share of the land to the plaintiff in CS 443/00 for a price of Rs.68,75,550/-. A letter of confirmation dated 5.4 .1981 was executed by the defendants. The said consideration was to be paid in instalments, and the plaintiff paid a sum of Rs.48,70,925/- upto 1983 itself. They also agreed to sell the first floor with proportionate undivided share of land for Rs.67,18,800/- to M/s. Sundardas Arjunlal, a Partnership firm and sister concern of the plaintiff in CS 443/00. The said partnership firm paid Rs.47,19,800/- till 1982 . The defendants also executed letter of confirmation dated 5.4.81. Under the letter of confirmation, the possession of the respective portions will be handed over to the plaintiff and the firm within 18 months from the date of the payment of the 2nd instalment, by which time the construction will be completed. The properties agreed to be sold includes provision of escalator, partition for shops, provision of proportionate car parking area in the basement and shall be centrally air conditioned. The said amounts were paid by the plaintiffs well before 12.1.83. The said letter of confirmation would conclusively establish that the suit properties were sold to the plaintiff. This fact is also clear from the income tax assessment order of the 3rd defendant and the findings therein. In this transaction, everything had concluded, except the registration of the formal deed of conveyance in favour of the plaintiff. Possession had been handed over to the plaintiffs on 15.7.1983. However, since certain civil and finishing works remained to be done, the plaintiffs could not put the property to effective use. Though the promoter was given time to complete the work, the works in the ground floor area still remain incomplete. The defendants trespassed into the first floor and installed some billiards tables. The plaintiffs are in physical, actual

and effective possession of the properties since 1983. Plaintiff came to know that certain portion of the property at the said address was proposed to be purchased by some third parties, and the same was advertised in The Hindu on 26.2.1995. thereafter, the defendants did not sell the ground and first floors to anybody, and they were also promising the plaintiffs that they will be executing the sale deed at the earliest. The plaintiffs came to know that the defendants were trying to dishonestly use and dispose off the properties which were agreed to be sold to the plaintiffs. When the defendants started using the ground and first floors as a club for billiards and snow ball, the plaintiff approached them, and the defendants removed the same and delivered possession to the plaintiffs. The defendants informed the same to the press wrongly as if the plaintiffs and the 2nd firm forcible took possession, and the same was also widely published. The intention of the defendants is to cheat the plaintiffs and deny their rights and remove them from the possession of the property. After receiving substantial amounts, the defendants cannot refuse to execute the sale deeds. On the basis of the complaints from both the parties, proceedings were initiated under S.145 of Cr.P.C., and the Executive Magistrate had passed an order dated 5.11.1999 stating that both the parties should refrain from the places and the property was also attached. Aggrieved over the same, the plaintiffs and one Baskar filed Crl.R.C.No.1422 of 1999. At the time of the defendants' offer, they proposed to put up only six floors. But, the defendants without any proper planning permission or authority have constructed 7th, 8th and 9th floors, due to which the plaintiffs' undivided interest in the common land has got diminished. They have no right or authority to put up additional floors. The defendants approached the authorities for regularisation of the said unauthorised constructions. Whether they succeed in their attempt or not, the defendants are liable to convey the schedule mentioned properties with proportionate undivided share of land, treating the complex having only basement, ground and six upper floors. When the defendants approached the plaintiffs for sale of the properties, they represented that they are not going to put up any additional floors. Since the construction of 7th, 8th and 9th floors is in violation of the terms and conditions of sale, the defendants have no right to deal with the said floors. The defendants have been making attempts to illegally deal with the ground and first floors by suppressing the said letter of confirmation. The plaintiffs jointly filed a suit against the defendants herein in O.S.No.4993 of 1999 before the City Civil Court, Chennai for injunction. The plaintiffs filed an application in I.A.No.12755/99 in the said suit for an interim injunction. Interim injunction was granted only for restraining the defendants from dealing with the ground and first floors. Aggrieved over the disallowed portion of the said order, the plaintiffs preferred an appeal in CMA No.193/99. The defendants preferred an appeal in CMA No.186/99 against the allowed portion of the said order. Both the appeals were pending before the City Civil Court, Madras. The plaintiffs were in symbolic possession of the properties throughout the Executive Magistrate's proceedings. An order dated 5.11.99 was passed by the Executive Magistrate directing both the parties not to enter the premises. The plaintiffs filed Crl.R.C.No.1422/99 before this court, and interim stay was obtained in Crl.M.P.No.10620/99. This court has vide order dated 8.6.2000 directed the Executive Magistrate to hand over possession to the defendants, instead of directing the Magistrate to hand over possession to the plaintiffs. More than

60% of the sale consideration has been received by the defendants. The plaintiffs are always ready and willing to pay the balance of sale consideration. The defendants have committed breach of the letter of confirmation and are attempting to sell the property to third parties and have put the ground and first floors for their personal use. They are not willing to conclude their part of the contract. The plaintiffs did not commit any default in performing its parts of contract. In view of the unauthorised constructions, the defendants have committed breach of the sale confirmation letters. The defendants are not entitled to use the suit properties as the plaintiffs are the owner of the same. The plaintiffs are also entitled for proportionate car parking area in the suit properties. If the amounts paid as deposits on various dates have been used in financial business, the plaintiffs would have earned crores and crores of rupees. Hence, the plaintiffs are reasonably entitled for interest at 30% per annum. However, the same is restricted to 18% per annum till the date of filing of the plaint and they claim the future interest at 30% per annum. The plaintiffs have been put to great mental tension and agony, and further they have been prevented from using the premises for their commercial use, thereby put to great loss of income. The defendants are liable to compensate the same. Since, no particular time was fixed for execution of the sale deeds, limitation starts from the day from which the defendants refused to execute the sale deeds. The plaintiffs came to know about the defendants' refusal through Junior Vikatan magazine dated 18.7.1999. Therefore, the suit is in time. Hence, the plaintiffs seek the above said reliefs.

4. The defendants 1 to 3 have filed separate written statements in both the suits with the following averments:

As per Article 54 of the Limitation Act 1963, the starting point of limitation in respect of suit for specific performance is the date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused. Similarly, as per Article 113 of the Act, the period of limitation for filing of a suit for refund of amounts advanced is three years, and the starting point of limitation is when the right to sue accrues. The second instalment was payable on or before 16.4.1981 and was actually paid in instalments by 1.6.1981 and completion and handing over of possession should therefore have been on 16.10.82 or 1.12.1982 which admittedly was not done. The last payment was on 12.1.83 and balance was claimed on 17.2.1983. Hence, the period of limitation expired on 17.2.1986. The plaintiffs have conveniently suppressed the complaint dated 16.10.1996 given by its Managing Director. Hence, the starting point of limitation was at least from 16.10.1996 and expired on 16.10.1999. The statement that the limitation commenced from 18.7.1999 is false. The main documents on which the plaintiffs laid the claim, are inadmissible in evidence. The dealings of the defendants were with a partnership firm known as M/s.Sunil Anand & Co., and not with M/s.Sunil Anand & Co. P. Ltd. The suit is therefore liable to be dismissed in limine. The sale consideration for the ground floor was fixed at Rs.68,75,550/- based on an area of 10186 sq.ft. The clause that there would be an upward or downward revision in price according to the actual area of the floor was inserted in the letter dated 5.4.81, as the project was only in the planning stage at this time. The actual area of the ground floor is 13738 sq.ft. The amount payable by the plaintiff in CS 443/00 would have been Rs.92,73,150/- and not Rs.68,75,550/-. The sale consideration for the first

floor was fixed at Rs.67,18,000/- based on an area of 11198 sq.ft. The said clause was also inserted in the letter dated 5.4.1981. The actual area of the first floor is 1440 8 sq.ft., and the amount payable by the plaintiff in CS 444/00 would have been Rs.86,44,800/-. From the documents filed by the plaintiffs, it is clearly seen that the plaintiffs were defaulters in payment right from the inception of the arrangement. They failed to mention when the construction ran into technical difficulties. If as alleged by the plaintiffs, the properties were sold to the plaintiffs in the year 1981, it follows that the above suits were not maintainable and as such infructuous. The plaintiffs have not produced a scrap of evidence to prove that the possession was handed over to it as early as 15.7.83. The order in Crl.R.C.No.1422/99 dated 8.6.2000 passed by this court would clearly establish that the defendants were always in possession of the properties described in the plaints schedules. Only the first floor was used by the defendants as a billards/snooker/ pool parlour. The ground floor is presently being used for storage. The defendants never attempted to cheat the plaintiffs. It was the plaintiffs who committed default in payment and afterwards tried to illegally take possession of the properties. The defendants never agreed to restrict the construction to 6 floors. Even the letter dated 5.4 .81 does not specify the total constructed area, number of floors or the undivided share to be conveyed. The plaintiffs were only promised proportionate undivided share in the land. No specific share could have been envisaged at that stage as the building plans had not been finalised then. The defendants were entitled to put up any number of floors provided sanction was obtained. Only a little over 50% of the original sale consideration was paid by the plaintiffs belatedly before it committed default in payment. The question of now being willing to pay the balance of sale consideration does not arise, the contract having been abandoned by both the parties in the year 1983 itself. The relief of specific performance is an equitable relief. The defendants 1 and 2 purchased the land and buildings by way of outright sale under a sale deed dated 18.4.80. Encouraged and misguided by the Managing Director of the plaintiffs, the first and second defendants allotted the prime floors. The plaintiffs defaulted in payment, and the defendants were put to great financial constraints to pay the cost of civil construction. The project came to a grinding halt. Due to these circumstances, neither party initiated proceedings against each other and in fact abandoned the contract. The Chennai Metropolitan Development Authority had issued a completion certificate which proved conclusively that the building has been constructed according to the planning permission granted. The plaintiffs have not paid the entire amounts due to the defendants till date. It was the plaintiffs, who prevented the defendants from using the property by unnecessarily interfering with the defendants' business and also by causing extensive damage to the said properties with the help of goondas. The plaintiffs are attempting to resurrect a cause of action which actually expired about 18 years ago, and the reasons trotted out by the plaintiffs to extend limitation are false. The relief of specific performance as well as the claim for refund are barred by limitation. Hence the suits have to be dismissed with exemplary costs.

5. On the above pleadings, the following issues were framed:

C.S.No.443/2000:

1. Whether the suit is barred by limitation as claimed by the defendants?
2. Whether the plaintiff has been and is always ready and willing to perform

its part of contract by paying the balance sale consideration?
3. Whether the putting up of Floors, 7, 8 & 9 is in accordance with the terms of the agreement? If not, whether the plaintiff is entitled for reduction of sale consideration due to the reduction of undivided interest in the land?
4. Whether the plaintiff is liable to pay any additional sale consideration if it is found that more area has been constructed than what has been agreed to be sold?
5. Whether in the alternative, without giving up the relief of specific performance and possession, the plaintiff is entitled for the relief of a direction to the defendants to pay Rs.2,10,75,500/- being the amounts paid by the plaintiff for purchase of the suit property with interest, at 30% p.a. on Rs.48,70,925/- as claimed in para 24(c) of the Plaint?
6. Whether the plaintiff is entitled for permanent injunction as claimed in Para 24(d) of the Plaint?
7. Was the plaintiff ever in possession of the property?
8. Are the documents filed by the plaintiff is admissible in evidence?
9. Is the plaintiff entitled to relief as claimed for?
C.S.No.444/2000:
1. Whether the suit is barred by limitation as claimed by the defendants?
2. Whether the plaintiff has been and is always ready and willing to perform its part of contract by paying the balance sale consideration?
3. Whether the putting up of Floors, 7, 8 & 9 is in accordance with the terms of the agreement? If not, whether the plaintiff is entitled for reduction of sale consideration due to the reduction of undivided interest in the land?
4. Whether the plaintiff is liable to pay any additional sale consideration if it is found that more area has been constructed than what has been agreed to be sold?

5. Whether in the alternative, without giving up the relief of specific performance and possession, the plaintiff is entitled for the relief of a direction to the defendants to pay Rs.2,04,16,000/- being the amounts paid by the plaintiff for purchase of the suit property with interest, at 30% p.a. on Rs.47,19,800/- as claimed in para 24(c) of the Plaint?
6. Whether the plaintiff is entitled for permanent injunction as claimed in Para 24(d) of the Plaint?
7. Was the plaintiff ever in possession of the property?
8. Are the documents filed by the plaintiff is admissible in evidence?
9. Is the plaintiff entitled to relief as claimed for?
6. ISSUES 1 TO 9 IN BOTH THE SUITS:
These two suits have been filed for specific performance of two agreements of sale both dated 5.4.1981 executed by the defendants in favour of the plaintiffs in respect of the schedule mentioned properties to the suits and in alternative a money decree directing the defendants to pay Rs.2,10,75,500/- and Rs.2,04,16,000/- respectively with subsequent interest thereon.

7. On the side of the plaintiffs, P.W.1 was examined, and Exs.P1 to P23 were marked. On the side of the defendants D.W.1 was examined, and Ex.D1 was marked.
8. Arguing for the plaintiffs, the learned Senior Counsel Mr.K.V. Venkatapathy would submit that the plaintiff in the first case is a private

limited company, while the plaintiff in the second case is a partnership firm; that PW1 is a Managing Director in the former and a Director in the latter; that the plaintiff in CS 443/00 was originally a partnership firm, and subsequently in 1981, the same was converted into a Private Limited Company; that the said private limited company has taken all the assets and liabilities of the earlier partnership firm; that PW1 and his three brothers who were partners became the Directors of the private limited company; that Ex.P17 is the Memorandum and Articles of Association; that only the four Directors are the shareholders, and except them, there is no other shareholder; that Ex.P1 8 is the xerox copy of the certificate of incorporation; that the agreements for sale for the ground and first floors of the defendants' proposed construction were entered into between the parties; that an advance of Rs.1.00 lakh was paid in each case on 5.4.81, in respect of which the defendants passed on Exs.P1 and P2 receipts; that Exs.P3 and P4 are the letters of confirmation issued by the first defendant in respect of both the agreements; that according to Ex.P5, a consolidated receipt, issued on 23.6.82, the defendants acknowledged the receipt of various payments amounting to Rs.34,19,800/-; that likewise under Ex.P6 consolidated receipt, they have acknowledged the receipt of Rs.36,70,925/-; that as per the agreements,the rate per square feet for the ground floor was Rs.675/- and for the first floor was Rs.600/-; that the defendants agreed to build approximate a carpet area of 1 0186 sq.ft. in the ground floor and 11198 sq.ft. approximately in the first floor; that no period or time was fixed for concluding the contract; that the stipulated time for completion of the building was 18 months from the date of payment of the second instalment; that thought the plaintiffs have paid the second instalment on 1.5.81, the defendants had not completed the construction; that it is pertinent to note that no default clause has been incorporated under Exs.P3 and P4 agreements; that as per the original agreements, the defendants were to put up the basement, car parking, ground floor plus six floors, as per the sanctioned original plan given by the MMDA; that they also agreed to provide the car parking area which was proportionate to the total build up area of the building; that out of the sale consideration of Rs.68,75,550/- for the ground floor, the plaintiff has paid Rs.4 8,70,925/- and towards the first floor out of the sale consideration of Rs.67,18,800/-, the plaintiff has paid Rs.47,19,800/-; that all the amounts have been paid back in 1983 itself; that the defendants did not complete the construction, but the construction was over in the year 1995; that even now the construction in the first floor is still incomplete; that since the defendants did not construct in accordance with the sanctioned plan, proceedings are initiated by the MMDA against them; that the plan originally sanctioned came to an end in the year 1982 itself; that without the sanction and approval of the MMDA, the defendants constructed the 7th, 8th and 9th floors, as a result of which the proportionate land to which the plaintiff was entitled to was drastically reduced and in so far as car car parking also; that only on 29.1.1988, the defendants had got additional construction of 7th, 8th and 9th floors regularised by the Government under Ex.P22, but there was a further direction that the defendants should get fresh approval by putting forth a revised plan before the MMDA; that the construction was abruptly stopped, and it came to a stand still in view of the above circumstances; that the plaintiffs have already paid 60% of the consideration even in 1983 itself; that the plaintiffs have been all along ready and willing to pay the balance of consideration; that it is pertinent to

note that the defendants have not challenged the means or the sources of the plaintiffs in the cross examination of PW1; that the plaintiffs filed an application for interim injunction in the present suits to restrain the defendants from alienating the property, and the same was granted subject to the conditions that the plaintiffs should deposit the balance of consideration and should also give an undertaking that he would pay the balance amount, as per the actual measurement as per the square foot basis; that the plaintiffs sought a modification of the order to permit them to give a bank guarantee for the balance of sale consideration in stead of depositing the said amount, and the same was ordered; that accordingly, the plaintiffs furnished a bank guarantee on 7.3.2001 and also gave an undertaking as ordered by the court; that all the above would go to show that the plaintiffs were ready and willing all along with sufficient means; that the suits filed by the plaintiffs were well within time; that there is no clause in the agreement between the parties fixing the time for concluding the contracts; that time stipulated for completion of the construction by the defendants and to hand over possession was 18 months from the date of payment of the second instalment; that the second instalment was paid on 1.5.81, but the defendants have failed to perform their part of the contracts; that it is not the case of the defendants that at any point of time they refused to perform their part of the contracts; that it is true that a police complaint was given by the plaintiffs on 16.10.1996; that the averments in the said complaint were the outcome of the assumption of PW1, and at no stretch of imagination it could be equated to a refusal; that it is an admitted fact that there was no correspondence between the parties, and under such circumstances, the contention of the defendants' side that the suits were barred by limitation has got to be rejected; that there is no evidence to indicate that the contracts between the parties were ever abandoned; that towards the sale consideration of both the agreements, the plaintiffs have paid nearly Rs.1.00 crore that too in the year 1983; that the defendants who have utilised the plaintiffs' money for their construction, have not performed their part of the contracts by conveying the properties and by executing sale deeds; that the court has to take note of the fact that the defendants have sold the 3rd, 4th and 5th floors to Aban Loyd for a sum of Rs.5.50 crores on as is where is condition and have also retained the 2nd, 6th to 9th floors totally measuring approxim ately 65,000 sq.ft.; that the plaintiffs continued to make payment even though the construction work was stopped abruptly at one point of time; that Ex.P15 is a copy of the Income Tax Assessment Order, according to which the expenses for the construction of the entire building have been met from the sale consideration of the ground and first floors; that the defendants who have given a copy of the said assessment order to the plaintiffs, have denied the delivery of the same, but at the same time, they have admitted that the original assessment order is in their custody, but have not produced the same; that though originally possession was handed over to the plaintiffs in the year 1983, the defendants made all their illegal attempts to dispossess the plaintiffs, which was ably resisted by the plaintiffs; that when the defendants lodged a complaint before the Egmore Police and a case was registered, on the same day, the plaintiffs who were in possession of the properties have also lodged a complaint before the same police station; that under such circumstances, the Inspector of Police, Egmore, after registering a case returned the same to the Tahsildar and Executive Magistrate of Egmore; that the Executive Magistrate after making

enquiry passed an order prohibiting both the parties from encroaching upon the disputed premises; that the said order was challenged before this court in Crl.R.C.No.1422/99 wherein an elaborate order was passed by this court finding that the defendants were in possession of the properties, and under such circumstances, the plaintiffs have taken the verdict of this court; and in view of the same, they sought for a direction from this court to the defendants to hand over possession of the property, and thus, the reliefs sought for have got to be granted in favour of the plaintiffs. Added further, the learned Senior Counsel that if for any reason, the court comes to the conclusion that the plaintiffs are not entitled for the specific performance of the contracts found in the plaint, the defendants should be directed to refund the advance amounts with 18% rate of interest till the date of the plaint and 3 0% rate of interest thereafter; that it is an admitted position that the plaintiffs have given an advance of Rs.96.00 lakhs and odd, which has been utilised by the defendants for the construction of the building, and even from the admission made by the defendants, it is clear that they have made lot of profits out of the said construction, and under such circumstances, a decree in favour of the plaintiff has got to be passed.

9. Countering to the above contentions of the plaintiffs' side, the learned counsel appearing for the defendants with vigour and vehemence would submit that the plaintiffs are not entitled for any of the reliefs asked for in the plaints; that it is true that the parties entered into two agreements for sale in respect of the ground and first floors of the proposed construction; that it was clearly understood that the time was the essence of the contracts; that a reading of Exs. P3 and P4 would clearly reveal that the second instalment should be paid by the plaintiffs on or before 16.4.1981, from which date the construction should be completed by the defendants within 18 months; that it is pertinent to note that the plaintiffs have utterly failed to make the second instalment as a result of which the defendants could not complete the construction; that Exs.P3 and P4 would clearly speak about the schedule of payments; that the plaintiffs not even in one occasion kept up the schedule; that the second instalment of Rs.10,45,925/- was not paid on 6.4.81, but was paid only in June 1981; that likewise, the third instalment should be paid at the starting point of the foundation as per clause ii of Ex.P4; that even that payment was not made by the plaintiffs even after the foundation work commenced and pending; that it was only because of the delay that was caused by the plaintiffs, the construction work was proceeded slowly; that the fourth instalment was also paid belatedly; that it is pertinent to note that PW1 has categorically admitted that he did not pay the instalments as contemplated under Ex.P4 in time; that the area has not been mentioned as carpet area in the agreements; that the contention of the plaintiffs' side that what was understood between the parties was carpet area could not be correct since the carpet area was only in respect of the leases; that the plaintiffs could not have any grievance for the additional constructions in respect of 7th, 8th and 9th floors, since nowhere it is found in Ex.P4 agreement as to how many floors were to be constructed; that PW1 has admitted that under Ex.P4 agreement, there is nothing to indicate that the defendants have to seek the permission of or inform the plaintiffs before making any additional constructions; that no specific undivided share of land has been mentioned in Ex.P4 agreement; that there is no recital in Ex.P4 agreement to the effect that the plaintiffs could stop payments, if there was any delay in

the construction; that it is true that there were some deviations in the constructions work, but the same was subsequently regularised and following the same, the building was completed; that the plaintiffs were never ready and willing to perform their part of the contracts from 1983 till the date of filing of the suits; that the plaintiffs have come forward with a false pleading stating that they have been in peaceful and uninterrupted possession of the properties; that at no point of time, possession of the properties were handed over to the plaintiffs; that a reading of Ex.D1 an elaborate judgment of this court in Crl.R.C.No.1422/99 would clearly reveal that the defendants continued to be in possession; that the plaintiffs have also filed a suit against the defendants stating that they were in possession of the properties, and apart from that during the pendency of the instant suits, the plaintiffs have filed an injunction application, and thus the plaintiffs have come forward with unclean hands which would disqualify the plaintiffs from getting the equitable relief of specific performance; that the parties have abandoned the contracts even in the year 1983; that subsequent to the payment in the year 198 3, the plaintiffs have not made any payment nor have they made any demand for the completion of the work; that were they ready and willing to perform their part of the contracts; that a perusal of Ex.P8 written by the defendants would clearly reveal that the plaintiffs were liable to pay the balance of consideration in the year 1983; that the fact that the plaintiffs failed to comply with the demand therein and kept silence till 1995, when they gave a complaint before the D.G.P., Madras, would clearly indicate that the parties have abandoned the contracts; that even assuming that the time was the essence of the contracts and not fixed under the agreements, the plaintiffs should have filed the suits within three years from the date of notice of refusal by the defendants, but the plaintiffs have given a complaint to the D.G.P. on 16.10.1996; that the evidence of PW1 in that regard would clearly reveal that the plaintiffs had a clear notice of refusal by the defendants to perform their part of the contracts, and thus the plaintiffs should have filed the suits within three years, but have not filed so, and hence the suits are barred by limitation, and thus, the abandonment, limitation and breach of the contracts by the plaintiffs by not performing their obligations as found in the contracts all would disentitle the plaintiffs from getting the relief of specific performance, and hence the suits in that regard have got to be dismissed. Added further, the learned counsel that the plaintiffs are also not entitled for the relief of refund, since the defendants suffered a lot of losses and damages not only financially but also by way of reputation; that due to the delayed payments, the defendants could not proceed with the construction works and have to sustain losses enormously; that DW1 has elaborately spoken about the losses sustained by them; that there is nothing to contravert the evidence of DW1 in that regard; and considering all the above, the court has to dismiss the suits in entirety with costs.

10. The admitted facts can be shortly narrated as follows:

The plaintiff in C.S.443/2000 is a private limited company, while the plaintiff in C.S.444/2000 is a partnership firm. P.W.1 is the Managing Director in the former and a Partner in the latter. D.W.1 and his wife, the defendants 1 and 2 respectively in both the suits are the partners of the third defendant firm. The defendants purchased landed property and entrusted the same for the purpose of construction to E.C.C. of Larsen and Toubro Group. P.W.1 expressed his willingness to purchase the ground and first

floors from the defendants. Pursuant to the offer, the defendants agreed to sell the proposed ground floor of the property along with the proportionate undivided share of the land to the plaintiff for a price of Rs.68,75,550/- which is the subject matter in CS 443/2000 and likewise agreed to sell the proposed first floor of the property along with the proportionate undivided share of the land to the plaintiff for a price of Rs.67,18,800/- which is the subject matter in CS 444/2000. The defendants also agreed to build approximately a carpet plinth area of 10,186 sq.ft. in the ground floor and a carpet area of 11,198 sq.ft. approximately in the first floor. Consequent upon the said two agreements on 5.4.1981, the first defendant received Rs.1.00 lakh for the ground floor and Rs.1.0 0 lakh for the first floor as advance and passed on the receipts under Exs.P1 and P2 respectively on behalf of the defendants. The defendants also confirmed the said agreements under Exs.P3 and P4 letters. The defendants issued Ex.P5 a consolidated receipt dated 23.6.1982 acknowledging the payment of Rs.34,19,800/- received on various dates towards the transaction covered under CS 444/2000. Likewise, the defendants also issued Ex.P6 consolidated receipt dated 23.6.1982 acknowledging the payment of Rs.36,70,925/- received on various dates towards the transaction covered under CS 443/2000. The rate per square feet was agreed at Rs.675/- for ground floor and Rs.600/- for the first floor. The stipulated time for the completion of the buildings was 1 8 months from the date of payment of the second instalment. The plaintiffs paid the second instalment on 1.5.1981. The defendants did not complete the construction within 18 months from the payment of the second instalment. So far the plaintiffs have paid Rs.48,70,925/- for the ground floor and Rs.47,19,800/- for the first floor as found under Exs.P8 and P7 consolidated receipts dated 17.2.1983 respectively. Except the above, the plaintiffs did not pay the balance of the sale consideration. The plaintiffs received Exs.P10 and P11 notices dated 5.8.96 from the Office of the Assistant Commissioner of Income Tax, regarding the confirmation of the amounts paid by the plaintiffs to the defendants in respect of the properties covered under both the suits. Exs.P12 and P13 dated 7.8.96 are the xerox copies of the reply given by the plaintiffs to the Assistant Commissioner of Income Tax. P.W.1 gave evidence before the Assistant Commissioner of Income Tax, and the certified copy of the same is Ex.P14. Ex.P15 is a xerox copy of the assessment order, and the original of the same is in the custody of the defendants. The plaintiffs gave a complaint to the Director General of Police, Madras against the defendants, and there were criminal proceedings. The same was published in a magazine " Junior Vikatan" dated 18.7.1999. A copy of the same is Ex.P16. The plaintiffs filed a suit against the defendants before the City Civil Court for the relief of permanent injunction, and the same was later withdrawn. During the pendency of the suit, the plaintiffs made two interim injunction applications in O.A.Nos.576/2000 and 577/2000. Interim injunction was granted subject to the condition that the plaintiffs should deposit the balance of consideration and also give an undertaking that they would pay the balance as per the actual measurement as per the square foot basis. Later the plaintiffs filed the application seeking modification of the said order and to permit them to give bank guarantee for the balance of sale consideration in stead of depositing the said amounts. The said application was ordered. Accordingly, the plaintiffs furnished a bank guarantee on 7.3.2001 and have also given an undertaking that they would pay the actual extra measurement cost at the time

of possession. The plaintiffs have also renewed the bank guarantee till 5.3.2003.

11. The plaintiffs have come forward with both the suits seeking the relief of specific performance of two agreements of sale in respect of the ground and first floors of a building more fully described in the Schedules to the plaints. As seen above, there is no dispute between the parties as to the offer, acceptance, considerations, confirmation of the agreements, initial advance of Rs.1.00 lakh in each case and subsequent consolidated payments. The specific case of the plaintiffs is that out of the sale consideration of Rs.68,75,550/- for the ground floor, they paid Rs.48,70,925/-, and out of the sale consideration of Rs.67,18,800/- for the first floor, they have paid Rs.47,19 ,800/-; that as understood between the parties, the defendants should have completed the construction within 18 months from the date of payment of the second instalment and hand over possession; that though the second instalment was paid on 1.5.1981, the defendants have failed to complete the construction, but the construction of the first floor was over in 1995, and the ground floor is still incomplete; that in view of the deviation from the approved plan, the defendants could not even proceed with the construction of the ground and first floors; that the same was regularised by a Government Order in the year 198 7; that though the plaintiffs were ever ready to pay the balance of considerations, despite requests and reminders, the defendants did not complete the transaction, which constrained the plaintiffs to filed these two suits. The defendants have contested the suit by stating that the plaintiffs have made a thorough breach of the contracts in not keeping up the schedule of payments; that both the suits are barred by limitation; that both the parties have abandoned the contracts even in the year 1983; that in view of the acts and conduct of the plaintiff, the defendants have suffered heavy losses and damages, and the defendants are entitled to adjust the amounts already paid by the plaintiffs, towards the said losses and damages; that the plaintiff in CS 443/2000 is shown as the Private Limited Company, with whom the defendants did not enter into any agreement, but only with a partnership firm, and for all the reasons, the plaintiffs are not entitled to any relief.

12. Following the oral discussion for the purchase of ground and floors in the proposed construction to be made by the defendants, the plaintiffs have paid Rs.1.00 lakh as advance in each case on 5.4.1981, as evidenced by Exs.P1 and P2 receipts issued by the first defendant. Except the letters of confirmation as evidenced under Exs.P3 and P4 dated 5.4.1981, no separate written agreements were entered into between the parties. Under Exs.P3 and P4, the schedule of payments as to the balance of considerations is clearly set out. A perusal of Exs.P3 and P4 would indicate that no period or time was fixed for concluding the contracts. Relying on the Clause stating "we expect to complete the construction in 18 months time from the date of the second instalment when we shall hand over possession to you" under Exs.P3 and P4, the learned Counsel appearing for the defendants would argue that the said clause would indicate that the time was the essence of the contract; and that if the building was not completed within 18 months from the date of the second instalment, the plaintiffs should have initiated proceedings for the specific performance of the contracts. The court is unable to agree with the said contention, since the said Clause would speak of the assurance and undertaking given by the defendants to complete the construction within 18 months from the date of the payment of the second instalment and hand over possession.

Admittedly, the construction was not completed within the 1 8 months from the date of the second instalment by the plaintiffs. It would be quite evident that at that juncture, the defendants have not acted as per the undertaking given by them in the said confirmation letters. From the available materials, it could be seen that a couple of payments were made by the plaintiffs and received by the defendants even after the 18 months time from the date of the second instalment. Under such circumstances, the defendants cannot be permitted to say that the time was the essence of the contracts. Had the time been the essence of the contracts, the defendants could have well refused to receive the further payments and cancelled the agreement, but have not done so. But, on the contrary, the defendants have received the payments, even after the time, and hence, the first contention of the defendants' side that the time was fixed for the completion of the contracts cannot be countenanced.

13. According to the learned Counsel for the defendants, even assuming that the time was not fixed for the performance of the contracts, the plaintiffs should have filed the suits for specific performance within three years from the time of their notice that the performance was refused by the defendants. It is an admitted position that there was no correspondence between the parties at any point of time. It is not the case of the defendants that they ever refused to perform their part of the contract. D.W.1, the first defendant in both the suits, has nowhere stated that he refused to perform the said agreements for sale. It is submitted by the defendants' side that the plaintiffs have given a criminal complaint on 16.10.1996, and the averments made by the plaintiffs in the said complaint would clearly reveal that the plaintiffs were put on notice as to the refusal of the defendants to complete the contract. P.W.1 has admitted that he complained to D.G.P., Madras on 16.10.1996 about the conduct of the defendants, and has stated as follows:

"We have come to know that Mr. and Mrs. Cletus Winston had no intention of conveying the first floor portion of the property in our favour and keep their commitment though they have received major sale consideration.....

Mr. & Mrs. Cletus Vincent who have been paid a substantial portion of the sale consideration in respect of the above property are seeking to dishonestly use and dispose of the property in violation of the obligations under the agreement between them and us. The action of the said Mr. and Mrs.Clectus Vincent amounts to criminal breach of trust and cheating punishable under the provisions of Indian Penal Code. As referred to already we have parted with Rs.46,19,800/- towards the sale consideration of the property and intentional and fraudulent action of Mr. & Mrs.Cletus Vincent is wholly illegal and warranting action."

14. The learned Senior Counsel appearing for the plaintiffs would submit that the plaintiffs have not stated in the said complaint as to any refusal made by the defendants to perform their part of the contract, but have spoken about their intention not to do so, and thus, it was only an assumption of P.W.1, and it cannot be equated to refusal as required by law. Under the stated circumstances and in view of the averments made in the said complaint, the court has to necessarily agree with the defence. As seen above, the plaintiffs have not only stated that the defendants had not the intention of conveying the property in favour of the plaintiffs and keep their commitment, but has also stated that the intentional and fraudulent acts of the defendants amounted to criminal breach of trust and cheating, in spite of Rs.46,19,800/-

paid by way of sale consideration, and it warranted criminal action in the hands of the police. At this juncture, the court has to necessarily point out that the starting point of limitation under Article 113 of the Limitation Act as to the specific performance of a contract would commence when the plaintiffs have noticed that the performance was refused by the defendants. "Notice" contemplated under the said Article need not be a written communication. It would be suffice, if there is an intimation or information, and it would even imply the knowledge which comes from the direct perception or from inference, which would reasonably arise out of the several facts and circumstances. In the instant case, it remains to be stated that the averments made by the plaintiffs in the said criminal complaint would be clearly indicative of their knowledge as to the refusal of performance by the defendants in respect of their part of the contracts. It is pertinent to note that after the consolidated payments that were made by the plaintiffs as evidenced by Exs.P7 and P8 in 1983, there is no correspondence or communication between the parties till the criminal complaint dated 16.10.96. No material is placed by the plaintiffs before the court that they made any payment or made any demand for the performance of the contracts. Under such circumstances, the said criminal complaint given by the plaintiffs on 16.10.96 with such averments would lead only to the inference that the plaintiffs were clearly put on notice that the defendants were not willing to perform their part of the contracts, and hence, the suits for specific performance should have been brought within three years after such notice. In the instant case, both the suits were filed on 19.6.2000, which is clearly after three years from the date of the said complaint dated 16.10.1996, as found under Ex.P16, and hence, the court has to necessarily hold that the suits in respect of specific performance brought up after such notice viz. after more than three years, would be barred by limitation.

15. Alleging that the plaintiffs were all along ready and willing to perform their part of the contracts by paying the balance of considerations, the plaintiffs have sought for the relief of specific performance. Contrary to the above, it is contended by the defendants' side that the plaintiffs were never ready and willing to perform their part of the contracts, but have been chronic defaulters in payment of considerations as agreed upon between the parties. Concededly, the total sale considerations for the ground and first floors were Rs.68,7 5,550/- and Rs.67,18,800/- respectively. According to Exs.P3 and P4 confirmation letters, the second instalment should be paid by the plaintiffs on or before 16.4.1981. The plaintiffs have admitted that the second instalment was not paid by them on 16.4.81, but the same was completed in June 1981. It is not in dispute that the third instalment was to be paid at the start of the foundation, as per Clause (ii) of Exs.P3 and P4. The plaintiffs have admitted that they have not made the third instalment as per the schedule, but would add that the foundation work did not start at all that time. Likewise, the fourth instalment of Rs.11,45,925/- payable on the 45th day after the third instalment, as per Clause (iii) was not paid as per the schedule. In short, the plaintiffs have categorically admitted that they have not paid any of the instalments as contemplated under Ex.P4 in time. Exs.P5 and P6 consolidated receipts dated 23.6.1982 contain all necessary particulars as to the due dates, amount due, total due, received date, received amount and total received. Under Ex.P5, it is stated as follows:

"Against an amount of Rs.60,46,920/- due and payable by 1st June, 198 2,

payments have only been made to the tune of Rs.34,19,800/- (Rupees thirty four lakhs nineteen thousand eight hundred only) ie. lower than stipulated by Rs.26,27,120/-."

Likewise, under Ex.P6, it is stated thus:

""Against an amount of Rs.61,87,995/- due and payable by 1st June, 19 82, payments have only been made to the tune of Rs.36,70,925/- (Rupees thirty six lakhs seventy thousand nine hundred and twenty five only) ie. lower than stipulated by Rs.25,17,070/-."

Even Ex.P8 confirmation receipt would state that out of Rs.68,75,550/- due on 1.9.82, the plaintiffs have paid only Rs.48,70,925/- only, and thus, there was a balance of Rs.20,04,625/-. The statements made by the defendants under Exs.P5, P6 and P6 are not disputed by the plaintiffs. These statements would go to show that the plaintiffs even from the time of the second instalment have committed default from keeping up the schedule of payments, as per the agreements. However, it has to be necessarily stated that even in 1983, the plaintiffs have paid Rs.48,70,925/- out of Rs.68,75,550/- for the ground floor and Rs.47,19,800/- out of Rs.67,18,800/- for the first floor.

16. At this juncture, it has become highly necessary to look into the acts and conduct of the defendants. It is an admitted position that at the time of entering into the contracts, the construction work did not commence. As understood between the parties, the construction should be completed by the defendants within 18 months from the date of second instalment, and possession should be handed over to the plaintiffs. D.W.1 has categorically admitted that he did not complete the construction, as agreed upon between the parties. It is contended by the plaintiffs' side that at the time of agreements, the defendants had an approved plan for construction of the ground floor plus six floors only, but the defendants deviating therefrom constructed 7, 8 and 9 floors. D.W.1 has well admitted that originally he had obtained planning sanction for the basement, ground floor plus six floors, and there were some deviations from the sanctioned plan while putting up the construction for the basement, ground floor plus six floors, and apart from that deviations, he put up unauthorised construction of 7 and 8 floors with a pent house. This candid admission made by D.W.1 would make it abundantly clear that he has made a thorough deviation from the sanctioned and approved plan by raising 7, 8 and 9 floors, but also even in the construction for basement, ground floor plus six floors. The evasive answer given by D.W.1 that he did not remember as to whether the original planning permission expired in 1982; and that without referring to the necessary documents, he could not answer the said question would go to show that it is well within his knowledge that the original planning permission expired in 1982 itself. According to D.W.1, a revised plan for regularising the deviations and for regularising the 7th and 8th floors was filed and was kept pending by the Government, but was subsequently rejected by the Government by its Order under Ex.P22 dated 27.1.1987, and a review petition filed by the defendants was allowed by a Government Order dated 29.1.1988 under Ex.P23. According to Ex.P22 G.O., the defendants were to apply to M.M.D.A. for a fresh planning p ermission, and only then they could commence the constructions. This fact would indicate that the defendants should have applied to the MMDA for a fresh planning permission to continue their construction. D.W.1 has categorically admitted that the construction was over only in 1995. Though the structural work of the basement plus 9 floors was completed even in the year 1983, the defendants

could not complete the full-fledged construction due to the actions taken by the authorities and had to seek for the regularisation, and on the rejection of the same were to apply to the MMDA by a revised plan. Under such circumstances, the defendants having committed all the deviations and irregularities in the constructions, should not be permitted to complain that the plaintiffs have defaulted in making the payments as per the schedule, when the plaintiffs have paid 60% of the considerations. Thus, the court is able to notice that both the parties to the agreements have breached the contracts on their respective sides.

17. In the instant case, the court is able to notice unexplained latches on the part of the plaintiffs. Admittedly, the structural construction of the building was completed in 1983, the deviations made were regularised in 1988, and the building was completed in 1995. Under such circumstances, the contention of the plaintiffs that they were waiting under the fond hope that the defendants would execute sale deeds by receiving the balance of consideration is highly improbable and unbelievable. It is pertinent to note that the plaintiffs are business concerns and have also advanced a sum of Rs.1.00 crore. The conduct of the plaintiff in not making a demand for such a long period would be against the conduct expected of an ordinary prudent man under the given circumstances. The said unexplained latches stands also a good ground for denial of the equitable relief of specific performance. It is contended by the defendants' side that both the parties have abandoned the agreements even in the year 1983. The court is of the view that in the absence of any direct proof or the circumstances indicating the same, the said contention of abandonment cannot be accepted.

18. It is well settled proposition of law that a person who seeks for specific performance, an equitable relief, should come to court with clean hands. The plaintiffs have well averred in the plaints that in the sale transaction everything was concluded except registration of the formal deed of conveyance in favour of the plaintiffs, and the possession had been handed over to the plaintiffs as early as 15.7.1 983, and since then, the plaintiffs have been in peaceful, physical and uninterrupted possession of the suit properties. No material is placed before the court to accept the contention that the plaintiffs were ever put in possession of the properties. It is quite evident from the evidence both oral and documentary that due to the irregularities and deviations from the sanctioned plan, the construction work was abruptly stopped in 1983 and continued to be in the same condition till 1987. Taking into consideration the communication made under Ex.P8 complaining of the non payment of the consideration payable, as per schedule and the fact that the construction of the building remained incomplete, it would be hard to accept that the defendants handed over possession of the properties to the plaintiffs. Before filing the instant suits, the plaintiffs have already filed a suit for permanent injunction against the defendants alleging that they are in possession of the properties, and hence, the defendants should be restrained from interfering with their possession of the properties. It is admitted by P.W.1 that the said suit was withdrawn. The question as to the possession of the property was the subject matter of S.145 Cr. P.C. proceedings, wherein it was contended by the plaintiffs that they were in possession of the property, and that this court had an occasion to consider the same in Crl.R.C.No.1422/99. By an elaborate order dated 8.6.2000 as evidenced under Ex.D1, this court has found that the defendants were always

in possession of the properties. All the above would clearly indicate that the plaintiffs who were never put in possession of the suit properties have come with a false averments stating that the possession was handed over to them, and they have been in enjoyment of the same peacefully and without any interruption whatsoever. For the reasons stated and discussions made above, the court is of the considered view that the plaintiffs are not entitled to the equitable relief of specific performance of the agreements in respect of the Schedule mentioned properties to the plaints.

19. The plaintiffs have sought for the refund of the advance with interest as an alternative relief. Concededly, the plaintiffs have paid Rs.48,70,925/- under the first agreement and Rs.47,19,800/- under the second agreement, which would represent more than 60% of the respective total sale consideration. It is true that the plaintiffs have defaulted to make the instalment payments as per the schedule, but have stated that the defendants have deviated from the sanctioned plan not only by raising construction of 7th, 8th and 9th floors but also even in the basement, ground floor plus six floors, and the building could not be proceeded with on such irregular ities for a period of nearly five years. At no point of time, the defendants have made any attempt to cancel the agreements or make refund of the advance paid, but have utilised the moneys of the plaintiffs for the said construction. D.W.1 has admitted that the total cost of the land at that time was only Rs.5.50 lakhs. According to Ex.P15 Income Tax Assessment Order, the total cost of construction of the whole project reflected as capital work in progress is shown by the defendants as Rs.1,35,79,02 8/-. Even as per the evidence of D.W.1, he has sold the 3rd, 4th and 5th floors to M/s.Aban Lloyd for a sum of Rs.5.50 crores in as is where is condition and has retained 2nd, and 6th to 9th floors with a total extent of about 65,000 sq.ft. approximately. It is clear from the evidence that the defendants have made huge profits out of the alleged construction. It cannot be disputed that the amounts of the plaintiffs nearly a crore of rupees were utilised by the defendants for that purpose. It is highly surprising to note that D.W.1 has stated that he incurred heavy losses due to the defaults committed by the plaintiffs, but he has forgotten a while that he proceeded with the construction thoroughly deviating from the sanctioned plan. The available evidence would clearly indicate that the alleged losses by the defendants are imaginary and unfounded. On the contrary, the defendants have gained huge profits and enriched themselves by utilising the plaintiffs' moneys. At no stretch of imagination, the defendants could be permitted to appropriate the amounts of the plaintiffs towards those imaginary losses and damages. The interest of equity would require that the defendants should be directed to refund the entire amount with interest, and the interest of justice would also require the same. Taking into consideration the facts and circumstances of the case, the defendants are directed to pay the entire amounts paid by the plaintiffs with interest at 18% per annum till realisation.

20. The court is unable to appreciate the contention put forth by the defendants' side that the suit in CS 443/2000 is not maintainable in view of the fact that the contracts were originally entered into between a partnership firm and the defendants, but the plaint has been filed by a private limited company called M/s.Sunil Anand & Co. P. Ltd. From the evidence of P.W.1, it would be clear that the plaintiff in CS 443/2000 was originally a partnership firm and subsequently converted as a private limited company named M/s.Sunil

Anand & Co. P. Ltd. The plaintiffs have filed Ex.P17, the Memorandum and Articles of Association of Sunil Anand & Co. P. Ltd., and Ex.P18 a copy of the certificate of incorporation of the said company. The statement of P.W.1 that himself and his three brothers viz. S.M.Lal, Purushotham Sundar Das and Vasudev Sundar Das were partners in the said firm, and subsequently, all the aforesaid partners became Directors of Sunial Anand & Co. P. Ltd., and all the assets and liabilities of the firm were taken over by the company; and that the said Directors of the Private Limited Company are the shareholders of the same, and there are no other shareholders is not disputed by the other side. That apart, D.W.1 has well admitted in his evidence that he has received more than 50 % of the payment in respect of the transaction in CS 443/2000 from the Limited Company viz. Sunil Anand & Co. P. Ltd. It is also pertinent to note that there is a nominee Clause in the agreements which fact is also admitted by D.W.1. Considering all the above, the court is unable to see any merits in the contention of the defendants that CS 443/2000 is not maintainable on the above said ground. Therefore, all the above issues in both the suits are answered accordingly.

21. In the result, the plaintiff in C.S.443/2000 is given a decree for a sum of Rs.2,10,75,500/- together with future interest at 18% per annum on Rs.48,70,925/- from the date of plaint till realisation and with proportionate costs. In other respects C.S.No.443/2000 is dismissed.

22. In the result, the plaintiff in C.S.444/2000 is given a decree for a sum of Rs.2,04,16,000/- together with future interest at 18% per annum on Rs.47,19,800/- from the
date of plaint till realisation and with proportionate costs. In other respects C.S.No.444/2000 is dismissed.

23. A charge is created over the suit properties for the decree amounts stated supra till full satisfaction of the decrees. In view of the dismissal of the same, connected applications are dismissed. No costs.

M. CHOCKALINGAM, J

Index: Yes
Internet: Yes
15-7-2002
List of Witnesses
1. P.W.1 Arjunlal Sundardas
2. D.W.1 Cleetus Vincent
List of Documents
1. Ex.P1 5.4.81 Receipt by D1 to plaintiff
2. P2 5.4.81 -do-
3. P3 5.4.81 Confirmation letter
4. P4 5.4.81 -do-
5. P5 23.6.82 Receipt
6. P6 23.6.82 Receipt
7. P7 17.2.83 Receipt
8. P8 17.2.83 Receipt
9. P9 2.3.95 Lawyer's notice
10. P10 5.8.96 Letter from the Office of the Asst.
Commissioner of Income Tax

11. P11 5.8.96 -do-
12. P12 7.8.96 Reply
13. P13 7.8.96 Reply
14. P14 23.9.96 Enquiry proceedings
15. P15 31.3.98 Assessment order by Income tax Dept.
16. P16 18.7.99 Magazine – Junior Vikatan

17. P17 Memorandum and Articles of Association
18. P18 Xerox copy of certificate of
incorporation
19. P19 Statement of Account 1981-83
20. P20 Statement of Account 1982
21. P21 Statement of Account 1981-82
22. P22 29.1.88 Copy of G.O.Ms.no.90, Housing and urban
Development
23. P23 23.2.88 Publication in Indian Express
24. Ex.D1 8.6.00 Certified copy of judgment in
Crl.R.C.No.1422/99

nsv/

Judgment
in C.S.Nos.443 and
444 of 2000

C.S.No.443 and 444 of 2000

M. CHOCKALINGAM, J

The matter came up before the Court today under the caption
"For being mentioned".
Heard both sides. In page 44 para 23 of the Judgment dated
15.7.200 2 it is stated "A charge is created over the suit properties for the
decree amounts stated supra till full satisfaction of the decrees." This would
mean the properties mentioned in Schedule-A of the respective suits.

18.7.2002
vsi